

### **REMARKS**

The following amendments and remarks are prepared in response to the Advisory Action of October 6, 2005 and the final Office Action of June 16, 2005. Applicant submits herewith a request for continued examination (RCE). Claims 1-4, 6, 7, 11-14 and 18-22 remain pending in this application, after entry of this amendment. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

#### **Rejection of Claims 1-4, 8 and 13-14 Under 35 U.S.C. § 103(a)**

Claims 1-4, 8 and 13-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Sahai et al.* (U.S. Patent No. 6,594,699, hereinafter *Sahai*) in view of The Unix Man Pages. Claims 8 and 9 have been rewritten as claims 18 and 19, respectively.

The rejection of claims 1-3, 13, 14, 18 and 19 should be withdrawn as *Sahai* in view of The Unix Man Pages fails to teach or suggest all the recitations of these claims and therefore does not render obvious claims 1-3, 13, 14, 18 and 19.

Focusing now on the specific recitations of independent claims 1-3, 13, 14, 18 and 19 and the inadequacies of *Sahai* in view of The Unix Man Pages, claims 1-3, 13, 14, 18 and 19 have been amended to recite “program transmitting means for transmitting to the receiving apparatus a notification that the download is not available when the judging means judges that the receiving apparatus can not execute the program.” That is, when the judging means judges that the program can not be executed, the transmitting apparatus 10 sends a message “download not available” to the receiving apparatus 20. (See page 24, lines 21-23 and figure 12, S1209). This feature provides an advantage of preventing a meaningless download.

The Examiner asserts that *Sahai* discloses the program transmitting means at col. 6, lines 22-23. At col. 6, lines 22-23, *Sahai* discloses that the server 10 chooses 46 the appropriate transport mechanism to use to stream the media asset to the client. E.g., use Asynchronous Transfer Mode (ATM) AAL5 or User Datagram Protocol (UDP/IP). Next, the server chooses 48 the route through the network 14 that the media streams will take from the server 10 to the client or to another destination as designated by the user. *Sahai*, however, does not disclose that the server 10 sends a notification or message to the client or to another destination indicating that the download is not available. In fact, the words “notification” or “message” do not appear in *Sahai*. Rather, *Sahai* allows the server to choose the appropriate transport mechanism to use to stream the media asset to the client. Accordingly, *Sahai* does not teach or suggest “program transmitting means for transmitting to the receiving apparatus a notification that the download is not available when the judging means judges that the receiving apparatus can not execute the program.”

Furthermore, combining *Sahai* with The Unix Man Pages does not teach or suggest the features as recited in claims 1-3, 13, 14, 18 and 19. Applicant contends that The Unix Man Pages do not recite these features. On page 1, The Unix Man Pages state that the top mode provides an ongoing look at processor activity in real time. It displays a listing of the most CPU-intensive tasks on the system, and can provide an interactive interface for manipulating processes. However, The Unix Man Pages do not disclose sending a notification or message to the client or to another destination indicating that the download is not available. Hence, the deficiency of *Sahai* is not cured by The Unix Man Pages. Therefore, neither *Sahai* nor The Unix Man Pages, solely or in combination, teach or suggest “program transmitting means for transmitting to the receiving apparatus a notification that the download is not available when the

judging means judges that the receiving apparatus can not execute the program.” For at least the reasons discussed above, Applicant submits that claims 1, 2, 13, 14, 18 and 19 are patentably distinct over the combination of *Sahai* and The Unix Man Pages and the rejection under 35 U.S.C. § 103(a) should be withdrawn.

#### **Rejection of Dependent Claims 3 and 4**

Claims 3 and 4 depend from independent claim 2, adding structural features that more particularly define the invention and further distinguish over the cited references and the prior art of record. For these reasons, and for the reasons set forth above for claim 2, the rejection of these dependent claims under 35 U.S.C. §§ 102(b) and 103(a) are improper and should be withdrawn.

#### **Rejection of Claims 6-7, 10-12 and 17 Under 35 U.S.C. § 102(b)**

Claims 5-7, 10-12 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Sonderegger et al.* (U.S. Patent No. 5,692,129, hereinafter *Sonderegger*).

The rejection of claims 5-7, 10-12 and 17 should be withdrawn as *Sonderegger* fails to disclose all the recitations of these claims and therefore does not anticipate claims 5-7, 10-12 and 17. Claim 10 has been cancelled and claim 11, which depended from claim 10, has been rewritten in independent form. Claims 16 and 17 have been rewritten as claims 20 and 21, respectively.

Focusing now on the specific recitations of independent claims 6, 11 and 20 and the inadequacies of *Sonderegger*, claims 6, 11 and 20 have been amended to recite “the piece of resource data received by the resource data receiving means is a resource acquisition script used for acquiring resources necessary for an execution of a corresponding program.” Similarly,

claims 7, 12 and 21 recite “check script receiving means for receiving the check script sent from the transmitting apparatus in response to the check script request.”

The resource script is used to allocate resources necessary for executing download programs (see page 70). For example, the resource acquisition script may include an identification corresponding to a download program (see page 72). The program receiving unit receives one or more resource scripts transmitted from the transmitting apparatus in response to the script request (see page 73). The script provisional execution unit performs a provisional execution for each of the received resource scripts to judge whether the download program requested by the user can be executed (whether the resources necessary for the execution can be acquired) (see pages 73 and 74). The script provisional execution unit notifies the request receiving unit of a judgment result (“resource acquisition available” or “resource acquisition not available”) (page 74).

Applicant’s amendments should overcome the Examiner’s statement on page 3 of the final Office Action that at col. 21, lns. 5-9, *Sonderegger* discloses the above-recited features. At col. 21, lns. 5-9, *Sonderegger* discloses that if another resource (drive, port, or server) needs to be claimed by the application 23 that is being launched and a second querying step 190 determines that the resource has not been claimed by any process, then a claiming step 192 claims the resource for the application 23. That is, *Sonderegger* determines whether an application has been claimed and if not, claims the application. *Sonderegger*, however, does not disclose acquiring resources necessary for an execution of a corresponding program. Therefore, *Sonderegger* does not disclose “the piece of resource data received by the resource data receiving means is a resource acquisition script used for acquiring resources necessary for an execution of a corresponding program.” For at least the reasons discussed above, Applicant submits that

claims 6, 7, 11, 12, 20 and 21 are patentably distinct over *Sonderegger* and the rejection under 35 U.S.C. § 102(b) should be withdrawn.

**New Independent Claim 22**

Applicants have added new claim 22. No new matter has been introduced by this new claim. Support for new claim 22 can be found throughout the specification, for example, at page 36, lines 1-8. Claim 22 recites judging means for determining (a) whether the receiving apparatus can store the one or more programs by checking an amount of available storage space and (b) whether the receiving apparatus can execute the one or more programs by checking an amount of unused resource capability currently available. The cited references, solely or in combination, fail to teach or suggest these features. For at least the reasons discussed above, Applicant submits that claim 22 is patentably distinct over the cited references and should be allowable.

**Conclusion**

In view of the amendments and remarks made above, it is respectfully submitted that the pending claims are in condition for allowance, and such action is respectfully solicited. Authorization is hereby given to charge our Deposit Account No. 19-2814 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such an extension.


I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 16, 2005.

By: Tanya Kiatkulpiboone  
  
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Signature

Dated: November 16, 2005

Very truly yours,

**SNELL & WILMER L.L.P.**

  
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